

**Wednesday, February 5, 2003**

The Board met at its offices at 450 N Street, Sacramento, at 9:45 a.m., with Ms. Migden, Chairwoman, Mr. Parrish, Vice Chairman, Mr. Leonard and Mr. Chiang present, Ms. Mandel present on behalf of Mr. Westly in accordance with Government Code section 7.9.

## **PUBLIC COMMENT**

David Bertoni, Attorney, representing Barnes and Noble.com, made comments regarding the petition for rehearing *Barnes & Noble.Com*, 89872.

## **LEGAL APPEALS MATTERS, ADJUDICATORY**

Yamaha Motor Corporation U.S.A., 102973, 89000448380

4-1-96 to 9-30-99, \$20,545.10 Tax

Considered by the Board: December 19, 2002

Contribution Disclosures pursuant to Government Code section 15626: A disqualifying contribution was disclosed to Ms. Migden. No other disqualifying contributions were disclosed.

Action: Upon motion of Mr. Parrish, seconded by Mr. Leonard and unanimously carried, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, Ms. Migden not participating in accordance with Government Code section 15626, the Board ordered to deny the petition for rehearing.

Lifescan, Inc., 29592, 37314, 48966

10-1-94 to 12-31-97, \$337,258.94 Tax

Considered by the Board: December 19, 2002

Contribution Disclosures pursuant to Government Code section 15626: A disqualifying contribution was disclosed to Ms. Migden. No other contributions were disclosed.

Action: Upon motion of Mr. Parrish, seconded by Mr. Leonard and unanimously carried, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, Ms. Migden not participating in accordance with Government Code section 15626, the Board ordered to deny the petition for rehearing.

Barnes & Noble.Com, 89872

11-15-99 to 3-31-00, \$1,128,721.89 Tax, \$00.00 Failure to File Penalty

Considered by the Board: February 6, 2002

Contribution Disclosures pursuant to Government Code section 15626: No disqualifying contributions were disclosed.

Action: Upon motion of Mr. Parrish, seconded by Mr. Leonard and duly carried, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, Ms. Migden voting no, the Board ordered to grant the petition for rehearing.

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**CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS,  
ADJUDICATORY**

Roberto Brutocao, 140415

12-31-93, \$82,891.00 Tax, \$39,066.75 Late Filing Penalty

Venture Communications, Inc., 141641

9-30-93, \$475,256.55 Tax

Considered by the Board: October 3, 2002

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Mr. Chiang, seconded by Mr. Leonard and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board adopted a decision reversing the action of the Franchise Tax Board.

Atlantic Richfield Company, 134085

1988, \$9,203,702.00 Assessment

Considered by the Board: March 25, 2002

Contribution Disclosures pursuant to Government Code section 15626: A disqualifying contribution to Ms. Migden was disclosed. No other contributions were disclosed.

Action: Upon motion of Mr. Parrish, seconded by Mr. Chiang and unanimously carried, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, Ms. Migden not participating in accordance with Government Code section 15626, the Board adopted a decision granting the petition for rehearing.

Dale Mitchell Heindell, 103375

1980, \$2,204.59 Claim for Refund

Considered by the Board: June 20, 2002

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Mr. Parrish, seconded by Mr. Chiang and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board adopted a decision which modified the action of the Franchise Tax Board.

**HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE MATTERS,  
ADJUDICATORY**

Athina B. Salmo, 157240

2001, \$240.00 Claim for Credit

Considered by the Board: January 9, 2003

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Mr. Chiang, seconded by Mr. Parrish and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board adopted a decision reversing the action of the Franchise Tax Board.

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**LEGAL APPEALS MATTERS, CONSENT**

The Board deferred consideration of the following matters: *David J. Pedroli, 151696 and Frankie Renee Rios, 117109.*

With respect to the Legal Appeals Matters Consent Agenda, upon a single motion of Mr. Leonard, seconded by Mr. Chiang and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board made the following orders:

Vasant Kale, 89002204350

10-1-94 to 12-31-97, \$25,304.64 Tax, \$00.00 Negligence Penalty

Action: Deny the petition for rehearing as recommended by the Appeals Division.

David J. Pedroli, 151696

11-19-99, \$6,665.91 Tax, \$666.59 Failure to File Penalty

Action: The Board deferred consideration of this matter.

Frankie Renee Rios, 117109

7-1-97 to 9-30-00, \$50,864.44 Tax, \$5,086.40 Negligence Penalty

Action: The Board deferred consideration of this matter.

James Anderzen Burger, 201684

October 21, 2002 Notice of Seizure and Forfeiture

Action: Determined the staff properly seized the cigarettes and denied the petition.

Rebhya Abdeljawad, 198216

October 9, 2002 Notice of Seizure and Forfeiture

Action: Determined the staff properly seized the cigarettes and denied the petition.

**CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, CONSENT**

The Board deferred consideration of the following matter: *Heather K. Cahn, 162184.*

With respect to the Corporate Franchise and Personal Income Tax Matters Consent Agenda, upon a single motion of Mr. Chiang, seconded by Mr. Leonard and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board made the following orders:

Rebecca Aiello-Swan, 149981

1993, \$1,726.00 Tax, \$431.00 Late Filing Penalty, \$345.20 Accuracy-Related Penalty

Action: Sustain the action of the Franchise Tax Board.

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Ruth N. Alvarado, 171559

1999, \$727.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Elsie Bakkenson, 170161

1983, \$14,479.34 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Steven R. Ball, 141468

1994, \$4,456.00 Tax, \$891.20 Accuracy Related Penalty

Action: Sustain the action of the Franchise Tax Board.

Heather K. Cahn, 162184

1999, \$416.00 Assessment

Action: The Board deferred consideration of this matter.

Desmond Howard, 173221

1997, \$92,193.00 Assessment

Action: Sustain the modified action of the Franchise Tax Board.

Joseph Leonard Neufeld, 169531

1999, \$8,372.00 Tax, \$2,093.00 Notice and Demand Penalty, \$2,093.00 Late Filing Penalty

Action: Sustain the action of the Franchise Tax Board and impose a \$1,000.00 frivolous appeal penalty.

P.C. Dynamics, Inc., 164399

3-31-95, \$255.04 Late Filing, Notice and Demand, and Operating While Suspended Penalties

3-31-96, \$2,466.19 Late Filing, Notice and Demand, and Operating While Suspended Penalties

3-31-97, \$2,265.99 Late Filing, Notice and Demand, and Operating While Suspended Penalties

3-31-98, \$2,466.08 Late Filing, Notice and Demand, and Operating While Suspended Penalties

3-31-99, \$262.44 Late Filing, Notice and Demand, and Operating While Suspended Penalties

3-31-00, \$894.50 Late Filing, Notice and Demand, and Operating While Suspended Penalties

Action: Dismissed.

Ronna J. Robertson, 142068

1993, \$1,694.00 Tax, \$423.00 Delinquent Filing Penalty

Action: Sustain the action of the Franchise Tax Board.

Nanopadol Seniwog, 160249

1992, \$379.00 Tax, \$78.50 Accuracy Related Penalty

Action: Sustain the action of the Franchise Tax Board.

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William A. Tarver, 167934

1997, \$1,986.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Don Roland Taylor II, 162741

1999, 964.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Arturo Vega, 173175

1999, \$1,044.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Andy Walker, 158119

1999, \$840.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Nathan Boatner, 138360

1992, \$2,260.00 Assessment

Action: Deny the petition for rehearing.

#### HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE MATTERS, CONSENT

The Board deferred consideration of the following matter: *Maria Curt, 174159.*

With respect to the Homeowner and Renter Property Tax Assistance Matters Consent Agenda, upon a single motion of Mr. Chiang, seconded by Mr. Parrish and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board made the following orders:

Arleen Fornis Avery, 182594

2001, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Lydia A. Ballesteros, 173105

2001, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Carmen A. Briseno, 173394

2001, \$240.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Chester R. Collins, 174158

2000, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

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**Maria Curt, 174159**

2000, \$1.00 or more Claim for Credit

Action: The Board deferred consideration of this matter.

**Louise C. Dalske-Giarmona, 164187**

2001, \$240.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

**H. Frederick, Jr., 173811**

1999, \$240.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

**Maria Gallegos, 183601**

2001, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

**L. V. Gertos, 190055**

2002, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

**Joyce Goree, 190045**

2002, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

**S.S. Jain, 170690**

2001, \$348.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

**Ruth Jordan, 173488**

2000, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

**Allan I. Kotlisky, 170709**

2000, \$348.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

**Alma Neal, 191833**

2002, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

**Bibinaz Shikhoni, 172821**

2000, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

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Jacquelyn Tolan, 168007

2001, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

James M. Toller, 169653

2001, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Michael Tucker, 172810

2000, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Julia Villapando, 166053

2001, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

**SALES AND USE TAX MATTERS, REDETERMINATIONS, RELIEF OF PENALTIES  
AND DENIALS OF CLAIMS FOR REFUND, CONSENT**

With respect to the Sales and Use Tax Matters, Redeterminations, Relief of Penalties and Denials of Claims for Refund, Consent Agenda, upon a single motion of Mr. Parrish, seconded by Mr. Chiang and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board made the following orders:

Rapid Rack Industries, Inc., 117209

1-1-98 to 12-31-00, \$171,740.99

Action: Approve the redetermination as recommended by staff.

The C.I.T. Group/Eqpmnt. Financing, 158232

4-1-95 to 12-31-98, \$188,427.77

Action: Approve the redetermination as recommended by staff.

Sefar America, Inc., 136565

4-1-97 to 3-31-00, \$84,125.79

Action: Approve the redetermination as recommended by staff.

Catalina Glassbottom Boat, Inc., 153376

4-16-99, \$144,208.08

Action: Approve the redetermination as recommended by staff.

Richard Blatt, 153372

4-15-98, \$90,024.00

Action: Approve the redetermination as recommended by staff.

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Talon Aviation LLC, 151705

11-20-00, \$52,314.00

Action: Approve the redetermination as recommended by staff.

Timothy C. Wilkie, 167035

12-31-99, \$88,921.25

Action: Approve the redetermination as recommended by staff.

Calif. Shock Trauma Air Rescue, 157779

8-11-98, \$111,375.00

Action: Approve the redetermination as recommended by staff.

Rancho Aviation LLC, 182562

7-6-01, \$387,750.00

Action: Approve the redetermination as recommended by staff.

Shelter Cove Yachts LLC, 154902

4-1-98 to 12-31-98, \$547,430.68

Action: Approve the redetermination as recommended by staff.

Apple Computer, Inc., 203914

1-1-02 to 3-31-02, \$270,339.30

Action: Approve the relief of penalty as recommended by staff.

Homelife Corporation, 202367

4-1-01 to 6-30-01, \$70,201.90

Action: Approve the relief of penalty as recommended by staff.

W. W. Grainger, Inc., 203107

1-1-02 to 3-31-02, \$193,100.10

Action: Approve the relief of penalty as recommended by staff.

Tiffany &amp; Company, 203121

8-1-02 to 8-31-02, \$50,981.70

Action: Approve the relief of penalty as recommended by staff.

Viskase Sales Corporation, 113936

1-1-98 to 12-31-00, \$60,654.67

Action: Approve the denial of claim for refund as recommended by staff.

Iscribe, Inc., 162309

4-1-00 to 9-30-00, \$112,548.00

Action: Approve the denial of claim for refund as recommended by staff.

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Essilor of America, Inc., 135655

7-1-98 to 12-31-00, \$170,085.50

Action: Approve the denial of claim for refund as recommended by staff.

**SALES AND USE TAX MATTERS, CREDITS, CANCELLATIONS AND REFUNDS,  
CONSENT**

With respect to the Sales and Use Tax Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Mr. Parrish, seconded by Mr. Chiang and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, Ms. Mandel not participating in *United Defense L P, 145225*, the Board made the following orders:

Trishan Air, Inc., 157307

10-16-00, \$542,034.98

Action: Approve the credit and cancellation as recommended by staff.

Bank of America NT & SA, 204019

1-1-00 to 12-31-00, \$253,136.76

Action: Approve the credit and cancellation as recommended by staff.

Law Office of Raymond L. Riley, 203193

4-11-95, \$98,999.90

Action: Approve the credit and cancellation as recommended by staff.

Pacific Sportfishing Co., 202374

12-12-00, \$62,322.93

Action: Approve the credit and cancellation as recommended by staff.

Endeavors Technology, Inc., 202750

1-1-01 to 12-31-01, \$57,583.56

Action: Approve the credit and cancellation as recommended by staff.

Chat Communication Services, 203062

7-1-00 to 12-31-00, \$52,377.00

Action: Approve the credit and cancellation as recommended by staff.

Prudential Insurance Co. of Amer., 76992

1-1-97 to 12-31-01, \$2,163,285.17

Action: Approve the refund as recommended by staff.

Nissan Motor Acceptance Corp., 203010

7-1-97 to 6-30-00, \$1,882,534.11

Action: Approve the refund as recommended by staff.

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Color West, Inc., 164565

1-1-99 to 12-31-01, \$97,815.42

Action: Approve the refund as recommended by staff.

Don-A-Vee Jeep Eagle, Inc., 184380

1-1-02 to 3-31-02, \$62,002.90

Action: Approve the refund as recommended by staff.

Pacific Capital Bank, N.A., 133817

4-1-96 to 6-30-00, \$57,111.31

Action: Approve the refund as recommended by staff.

Thousand Oaks Prntng./Spclts., Inc., 140588

7-1-98 to 9-30-02, \$116,838.39

Action: Approve the refund as recommended by staff.

Aerojet-General Corporation, 153659

10-1-98 to 3-31-01, \$136,745.53

Action: Approve the refund as recommended by staff.

Telamon Corporation, 168456

10-1-01 to 12-31-01, \$109,253.09

Action: Approve the refund as recommended by staff.

F P C, Inc., 151456

1-1-99 to 9-30-01, \$53,275.70

Action: Approve the refund as recommended by staff.

Steven L. Hutnick, 156512

1-1-99 to 9-30-01, \$377,633.23

Action: Approve the refund as recommended by staff.

Purchase Leasing Corp., 113346

1-1-98 to 4-17-01, \$63,526.20

Action: Approve the refund as recommended by staff.

Silicon Graphics, Inc., 89000659870

1-1-96 to 6-30-99, \$442,265.49

Action: Approve the refund as recommended by staff.

Molecular Dynamics, 83501

10-1-98 to 3-31-00, \$575,194.70

Action: Approve the refund as recommended by staff.

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Technology Credit Union, 131850

4-1-98 to 6-30-01, \$150,903.28

Action: Approve the refund as recommended by staff.

BC Stocking Distributing, 142882

4-1-99 to 3-31-01, \$399,261.75

Action: Approve the refund as recommended by staff.

Procter & Gamble Paper Prods. Co., 204434

10-1-98 to 6-30-01, \$87,542.06

Action: Approve the refund as recommended by staff.

The Golden 1 Credit Union, 202151

7-1-00 to 3-31-02, \$340,086.93

Action: Approve the refund as recommended by staff.

Hyundai Motor Finance Company, 115747

1-1-98 to 6-30-98, \$57,585.35

Action: Approve the refund as recommended by staff.

Creative Design Interiors, Inc., 201910

7-1-99 to 6-30-02, \$52,438.36

Action: Approve the refund as recommended by staff.

Parker-Hannifin Corporation, 89000805870

7-1-96 to 6-30-97, \$357,346.38

Action: Approve the refund as recommended by staff.

Muller-Martini Corp., 145235

1-1-01 to 12-31-01, \$68,231.27

Action: Approve the refund as recommended by staff.

HBO & Company of Georgia, 154773

10-1-98 to 3-31-99, \$179,155.53

Action: Approve the refund as recommended by staff.

American Drug Stores, Inc, 204241

5-2-93 to 11-1-97, \$215,613.84

Action: Approve the refund as recommended by staff.

Daimler Chrysler Corporation, 203011

3-26-02 to 12-9-02, \$454,090.38

Action: Approve the refund as recommended by staff.

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**Bud Bailey Construction, Inc., 195666**

10-1-98 to 12-31-01, \$157,864.38

Action: Approve the refund as recommended by staff.

**Light Bulb City, Inc., 154558**

1-1-01 to 9-30-01, \$118,919.01

Action: Approve the refund as recommended by staff.

**Agilent Technologies, Inc., 187556**

10-1-99 to 6-30-02, \$830,785.45

Action: Approve the refund as recommended by staff.

**Longs Drug Stores California, Inc., 203012**

7-1-98 to 12-31-01, \$242,037.79

Action: Approve the refund as recommended by staff.

**Longs Drug Stores California, Inc., 203013**

1-1-02 to 3-31-02, \$91,199.96

Action: Approve the refund as recommended by staff.

**Medstone International, Inc., 202371**

4-1-98 to 6-30-01, \$89,513.31

Action: Approve the refund as recommended by staff.

**Glenayre Electronics, Inc., 173034**

10-1-00 to 12-31-00, \$106,706.93

Action: Approve the refund as recommended by staff.

**Brian H. Weiner, 202149**

10-1-98 to 9-30-01, \$182,296.40

Action: Approve the refund as recommended by staff.

**United Defense L P, 145225**

10-1-98 to 12-31-01, \$374,612.16

Action: Approve the refund as recommended by staff. Ms. Mandel not participating.

**Implant Innovations, Inc., 144048**

7-1-98 to 6-30-01, \$514, 597.55

Action: Approve the refund as recommended by staff.

**McLane Suneast, Inc., 204443**

4-1-99 to 6-30-02, \$57,523.68

Action: Approve the refund as recommended by staff.

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Quantum Plumbing and Heating, Inc., 134895

10-1-98 to 12-31-01, \$59,138.28

Action: Approve the refund as recommended by staff.

Marriott Distribution Services, Inc., 113347

9-1-95 to 10-9-98, \$464,812.85

Action: Approve the refund as recommended by staff.

IDEC Pharmaceuticals Corporation, 112530

1-1-98 to 12-31-00, \$55,502.85

Action: Approve the refund as recommended by staff.

Dawn Patrol Incorporated, 109035

10-1-97 to 12-31-00, \$133,080.04

Action: Approve the refund as recommended by staff.

Cirque Du Soleil America, Inc., 113327

10-1-97 to 9-30-00, \$192,030.55

Action: Approve the refund as recommended by staff.

Onyx Acceptance Corp., 112373

1-1-98 to 9-30-01, \$3,370,493.55

Action: Approve the refund as recommended by staff.

**SPECIAL TAXES MATTERS, CREDITS, CANCELLATIONS AND REFUNDS,  
CONSENT**

With respect to the Special Taxes Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Mr. Parrish, seconded by Mr. Chiang and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9 in *Catherine L. Russell, 188568; Unicare Life & Health Ins. Co., 165228; XL Specialty Insurance Company, 195724; Republic Western Insurance Co., 195728; and, Frontier Pacific Insurance Co., 197748.*, the Board made the following orders:

Golden West Refining Company, 169129

1-1-01 to 12-31-01, \$107,346.07

Action: Approve the credit and cancellation as recommended by staff.

Coastal West Ventures, Inc., 174405

1-1-01 to 12-31-01, \$262,332.37

Action: Approve the credit and cancellation as recommended by staff.

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Thrifty Payless, Inc., 203933

12-26-02 to 2-25-03, \$61,147.05

Action: Approve the refund as recommended by staff.

Catherine L. Russell, 188568

4-1-01 to 12-31-01, \$146,573.75

Action: Approve the refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Unicare Life & Health Ins. Co., 165228

1-1-97 to 12-31-97, \$54,413.41

Action: Approve the refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

XL Specialty Insurance Company, 195724

1-1-01 to 12-31-01, \$352,708.44

Action: Approve the refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Republic Western Insurance Co., 195728"

1-1-97 to 12-31-97, \$87,368.00

Action: Approve the refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Frontier Pacific Insurance Co., 197748

1-1-01 to 12-31-01, \$104,838.88

Action: Approve the refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

#### **PROPERTY TAX MATTERS NOT SUBJECT TO CONTRIBUTION DISCLOSURE STATUTE**

With respect to the Property Taxes Matters Not Subject to Contributions Disclosure Statute Agenda, upon a single motion of Mr. Chiang, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Ms. Migden, Mr. Leonard and Mr. Parrish voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board made the following orders:

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## Audits

### TCAST Communications, Inc. (7625)

1999, \$58,000.00 Escaped Assessment, \$5,800.00 Penalty, \$19,140.00 In-Lieu Interest  
2000, \$141,000.00 Escaped Assessment, \$14,100.00 Penalty, \$33,840.00 In-Lieu Interest  
2001, \$1,420,000.00 Escaped Assessment, \$142,000.00 Penalty, \$213,000.00 In-Lieu Interest  
2002, \$280,000.00 Escaped Assessment, \$28,000.00 Penalty, \$16,800.00 In-Lieu Interest  
Action: Adopt the audit escaped assessment, plus penalties and assessment in lieu of interest as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

### Broadwing Communications Services, Inc. (7630)

1999, \$17,200,000.00 Escaped Assessment, \$1,720,000.00 Penalty, \$5,676,000.00 In-Lieu Interest  
2000, \$30,600,000.00 Escaped Assessment, \$3,060,000.00 Penalty, \$7,344,000.00 In-Lieu Interest  
2001, \$21,900,000.00 Escaped Assessment, \$2,190,000.00 Penalty, \$3,285,000.00 In-Lieu Interest  
Action: Adopt the audit escaped assessment, plus penalties and assessment in lieu of interest as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

### WorldxChange Corporation (7933)

2002, \$(6,200,000.00) Escaped Assessment, \$0.00 Penalty, \$00.00 In-Lieu Interest  
Action: Adopt the audit escaped assessment, plus penalties and assessment in lieu of interest as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

## SALES AND USE TAX APPEALS HEARINGS

### Merrill Lynch-Pierce-Fenner-Smith, 90818

7-1-93 to 9-30-96, \$191,062.00 Claim for Refund

For Claimant: Rex Halverson, Representative

For Sales and Use Tax Department: Warren Astleford, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: No disqualifying contributions were disclosed.

Issue: Whether claimant's claim for refund filed on October 2, 2000, for self-reported use tax was timely filed under the provisions of Revenue and Taxation Code section 6902, thus entitling claimant to a net refund for the period July 1, 1993, through September 30, 1996, because a determination was issued for that period.

Action: Mr. Leonard moved to grant the petition. The motion was seconded by Mr. Parrish but failed to carry, Mr. Parrish and Mr. Leonard voting yes, Ms. Migden, Mr. Chiang and Ms. Mandel voting no.

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Upon motion of Mr. Chiang, seconded by Ms. Mandel and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

**American President Lines LTD., 104741, 75923**

1-1-93 to 12-31-95, \$428,112.47 Tax

For Petitioner:

Waived Appearance

For Sales and Use Tax Department:

Jeffrey Graybill, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether the exemption certificates dated March 21, 1994 and April 4, 1994, which petitioner issued to Hyundai Precision America, Inc., were timely and valid for all 1,300 chassis purchased by petitioner from Hyundai Precision America, Inc., rendering petitioner liable for any sales tax since petitioner did not use the chassis in any nontaxable manner

Whether petitioner has established that its sales to and leaseback of refrigerated cargo containers (mobile transportation equipment) from Carlisle Leasing International Corporation, an out-of-state corporation, constituted nontaxable sales for resale.

Whether petitioner made an exempt use in interstate or foreign commerce of generator sets that it purchased from out-of-state vendors.

Steve Ryan, Tax Counsel, Appeals Division, stated for the record that the Department conceded Issue 1 and the petitioner conceded Issues 2 and 3.

Action: Upon motion of Mr. Chiang, seconded by Mr. Parrish and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition and claim for refund be redetermined in accordance with the revised recommendation of the Appeals Division.

**EGS and Company Trust, 135923**

1-1-97 to 9-30-00, \$13,836.00 Tax, \$00.00 Negligence Penalty

For Petitioner:

Waived Appearance

For Sales and Use Tax Department:

Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether the evidence supports further reduction in the audited amounts of purchases of materials and fixtures.

Action: Upon motion of Mr. Chiang, seconded by Mr. Leonard and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be denied and redetermined as recommended by the Appeals Division.

**FINAL ACTION ON PETITION HEARD FEBRUARY 5, 2003**

Upon motion of Ms. Migden, seconded by Mr. Chiang and duly carried, Ms. Migden, Mr. Chiang and Ms. Mandel voting yes, Mr. Parrish and Mr. Leonard voting no, the Board ordered that the claim for refund of *Merrill Lynch-Pierce-Fenner-Smith, 90818*, be denied and redetermined as recommended by the Appeals Division.

The Board recessed at 10:40 a.m. and reconvened at 1:30 p.m. with Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel present.

Wednesday, February 5, 2003

## **PUBLIC HEARINGS**

### **Property Taxes – State Assessee Presentations On Capitalization Rates & Other Factors Affecting Values**

Harold Hale, Chief, Valuation Division, Property and Special Taxes Department, made introductory remarks regarding 1) state assessee presentations on capitalization rates and other factors and procedures affecting 2003-04 values of California state-assessed public utilities and railroads; and, 2) private railroad car assessee presentations on factors and procedures affecting 2003-04 taxable values of private railroad cars.

Speakers: Peter W. Michaels, Attorney for Various State Assesseees

## **PUBLIC COMMENT**

### **Proposed Amendment of Sales and Use Tax Regulation 1616, Federal Areas**

Speakers: David Quintana, Legislative Director/General Counsel, California Nations Indian Gaming Association  
Art Bunce, Tribal attorney, Agua Caliente Band of Cahuilla Indians  
Mark Levitan, Tribal Attorney, Monteur Peebles LLP, Various Tribes

Each speaker expressed support of the amendment to Regulation 1616, Federal Areas and was looking forward to the item being placed back on the agenda.

Ms. Migden directed staff to work with interested parties with regards to this issue. She anticipated the regulation would be placed on the April Board meeting calendar.

## **PUBLIC HEARING**

### **Proposed “Administrative Regulations” Section for Various Existing and New Special Taxes Regulations**

Janice Thurston, Assistant Chief Counsel, Legal Division, stated for the record that the Board proposes to add a new “*Chapter 9.9, Special Taxes Administration*,” containing *Regulations 4901, Records, and 4902, Relief from Liability*, to provide consistent guidance and clarification among all of the special tax programs in the Property and Special Taxes Department, as well as consistency with the same subjects under the Sales and Use Tax regulations. The Board proposes to add and amend existing regulations to cross-refer to the administrative regulations in the new Chapter 9.9.

Speakers: Speakers were invited to address the Board, but there were none.

Wednesday, February 5, 2003

Action: Upon motion of Mr. Chiang, seconded by Mr. Parrish and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board adopted the new "*Chapter 9.9, Special Taxes Administration*," as published (Exhibit 2.1).

Exhibits to these minutes are incorporated by reference.

### SALES AND USE TAX APPEALS HEARINGS

Gary Fisher and Terry Edwards, 89002181700

10-1-93 to 6-30-96, \$80,192.02 Tax, \$00.00 Negligence Penalty

For Petitioner: Abe Golomb, Representative  
Gary Fisher  
Terry Edwards

For Sales and Use Tax Department: Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether certain disallowed claimed sales for resale, are in fact, valid sales for resale.

Whether audited taxable rental receipts are subject to tax.

Action: Upon motion of Mr. Chiang, seconded by Mr. Parrish and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision, granting the petitioner 30 days to file supporting documents, the Department 30 days to respond, and the Appeals Division 30 days thereafter to review the petitioner's supporting documents, the department's response and provide its recommendation to the Board.

### CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS

Baxter Healthcare Corporation, 140712

12-31-95, \$1.00 or more Claim for Refund

For Claimant: Glenn Bystrom, Representative  
Steve Danowitz, Representative  
Chris Micheli, Representative

For Franchise Tax Board: Geoff Way, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: A disqualifying contribution to Ms. Migden was disclosed. No other disqualifying contributions were disclosed.

Issues: Whether appellant's payments to independent contractors for construction and installation of qualified property represent "capitalized labor costs that are directly allocable" to the construction, modification, or installation of qualified property, and thus qualify for the Manufacturers' Investment Credit.

Whether wages paid by appellant during 1995 to its in-house engineers provide an appropriate basis for computing appellant's percentage of in-house direct labor costs for purposes of determining the appropriate direct labor costs under the Manufacturers' Investment Credit of the independent contractors hired by appellant.

**Wednesday, February 5, 2003**

Whether certain reimbursable costs, such as expenses for travel, living, and shipping, which appellant claims with respect to its own employees and third party contractors constitute "qualified costs."

Whether all or any portion of appellant's Hyland facilities satisfy the requirements of a "special purpose building and foundation," and thus constitute qualified property for purposes of the Manufacturers' Investment Credit.

Whether appellant satisfies its burden of proving numerous assets identified in the appeal constitute tangible personal property used by appellant's various divisions in manufacturing as described in the Standard Industrial Classification Manual published by the United States Office of Management and Budget, 1987 edition, and thus constitute qualified property under the Manufacturers' Investment Credit.

Appellant's Exhibit: Miscellaneous (Exhibit 2.2)

Reed Schreiter, Tax Counsel, Appeals Division, reported that the Franchise Tax Board had conceded to the following costs on the petition of three assets numbers 119, 133 and 142.

Action: Upon motion of Mr. Parrish, seconded by Mr. Leonard and unanimously carried, Mr. Parrish, Mr. Leonard and Ms. Mandel voting yes, Ms. Migden not participating in accordance with Government Code section 15626, Mr. Chiang not participating, the Board deferred consideration of this matter to later in the day.

#### **American General Realty Investment, 156726**

1991, \$8,640,922.00 Claim for Refund

For Claimant:

Roy E. Crawford, Attorney

Tillery McGee, Tax Director

For Franchise Tax Board:

Norm Scott, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: No disqualifying contributions were disclosed.

Issues: Whether or not respondent properly disallowed a portion of the \$617,026,689.00 interest expense of appellant's unitary group – by the ratio of appellant's deductible insurance dividends (\$336,442,625) to its gross income (\$1,993,800,948.00) – to arrive at nondeductible interest expense of \$104,119,761, under the expense disallowance provisions of Revenue and Taxation Code section 24425. (In the "Taxpayer's Response," at page 7, appellant states that only \$75,967,138 in interest expenses should have been subject to such apportionment.)

Whether or not respondent introduced a "new matter" in this appeal after the assessment, causing the burden of proof to shift to respondent with respect to assessment, causing the burden of proof to shift to respondent with respect to any newly introduced factual issues requiring the presentation of different evidence.

Whether or not the circumstances of this appeal justify the granting of equitable relief from standard allocation or apportionment under Revenue and Taxation Code section 25137 in order to fairly represent appellant's business activity in California.

Whether or not the assessment is violative of the constitution.

Appellant's Exhibit: Flow Chart (Exhibit 2.3)

**Wednesday, February 5, 2003**

Action: Upon motion of Mr. Chiang, seconded by Mr. Parrish and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the claim for refund be submitted for decision.

### **PETITIONS FOR RELEASE OF SEIZED PROPERTY**

Naim Mashhour and Eyda Mashhour and Rami Michel Darghalli, 202617

Rami Michell Darghalli, 202618, 202621

Rami Michell Darghalli & Faiz Mohamed Munassar, 202622

November 4, 2002 Notice of Seizure and Forfeiture

October 28, 2002 Notice of Seizure and Forfeiture

For Petitioner: No Appearance

For Property and Special Taxes Department Blanca Breeze, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether the cigarettes should be forfeited to the State of California because they are described by subdivision (b) of Revenue and Taxation Code section 30436.

Action: Upon motion of Mr. Chiang, seconded by Ms. Mandel and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board determined the staff properly seized the cigarettes and denied the petition.

### **SALES AND USE TAX APPEALS HEARINGS**

Toyota Motor Distributors, Inc., 55844, 168174

1-1-94 to 9-30-95, \$00.00 Tax, \$00.00 Negligence Penalty

Toyota Motor Sales U.S.A., Inc., 55273, 132784

1-1-94 to 12-31-96, \$336,337.28 Tax, \$105,788.68 Negligence Penalty

For Petitioner: Appearance Waived

For Sales and Use Tax Department: Warren Astleford, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether TMS has shown that it consumed only 1 percent rather than 5.5 percent of its high value consumable supplies (brochures) purchased for resale from Nelson & Schmidt.

Whether the 10 percent penalty for negligence was properly applied in the audit of TMS.

Whether TMD filed a timely claim for refund with respect to deductions for tax-paid purchases of gasoline resold that were not claimed on its first and second quarter 1994 sales and use tax returns.

Whether the amounts of deductions for tax-paid purchases resold by TMD that is not subject to refund is available for application against liabilities of TMS, even though for the relevant period TMD and TMS were two separate legal entities.

Action: Upon motion of Ms. Mandel, seconded by Mr. Chiang and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition and claim for refund be denied and redetermined as recommended by the Appeals Division.

Wednesday, February 5, 2003

### CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS

Milgard Manufacturing, Inc., 135840

9-30-97, \$273,969.00 Claim for Refund

9-30-98, \$228,035.00 Claim for Refund

For Claimant:

Waived Appearance

For Franchise Tax Board:

Carol Matchett, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether the term "sales" for purposes of the sales factor in Revenue and Taxation Code section 25134 should include the gross amount received or the net amount received by appellant's treasury department from its investment activities occurring in Washington.

If the term "sales" includes the gross amount received by appellant's treasury department from its investment activities, whether respondent has demonstrated that the statutory apportionment formula does not fairly reflect appellant's business activity in California, such that respondent may apply an alternate formula under Revenue and Taxation Code section 25137.

Action: Upon motion of Mr. Chiang, seconded by Ms. Migden and unanimously carried, Ms. Migden, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, Mr. Parrish abstaining, the Board sustained the action of the Franchise Tax Board.

Mr. Chiang made the request to defer the decision in the claim for refund of *American General Realty Investment, 156726*, to the February 6, 2003 meeting. The request was granted by Chairwoman Migden.

Vice Chairman Parrish reopened the hearing of *Baxter Healthcare Corporation, 140712*.

Baxter Healthcare Corporation, 140712

12-31-95, \$1.00 or more Claim for Refund

For Claimant:

Glen Bystrom, Representative

Steve Danowitz, Representative

Chris Micheli, Representative

For Franchise Tax Board:

Geoff Way, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: A disqualifying contribution to Ms. Migden was disclosed. No other disqualifying contributions were disclosed.

Issues: Whether appellant's payments to independent contractors for construction and installation of qualified property represent "capitalized labor costs that are directly allocable" to the construction, modification, or installation of qualified property, and thus qualify for the Manufacturers' Investment Credit.

Whether wages paid by appellant during 1995 to its in-house engineers provide an appropriate basis for computing appellant's percentage of in-house direct labor costs for purposes of determining the appropriate direct labor costs under the Manufacturers' Investment Credit of the independent contractors hired by appellant.

**Wednesday, February 5, 2003**

Whether certain reimbursable costs, such as expenses for travel, living, and shipping, which appellant claims with respect to its own employees and third party contractors constitute "qualified costs."

Whether all or any portion of appellant's Hyland facilities satisfy the requirements of a "special purpose building and foundation," and thus constitute qualified property for purposes of the Manufacturers' Investment Credit.

Whether appellant satisfies its burden of proving numerous assets identified in the appeal constitute tangible personal property used by appellant's various divisions in manufacturing as described in the Standard Industrial Classification Manual published by the United States Office of Management and Budget, 1987 edition, and thus constitute qualified property under the Manufacturers' Investment Credit.

Appellant's Exhibit: Miscellaneous (Exhibit 2.2)

Action: Upon motion of Mr. Parrish, seconded by Mr. Leonard and unanimously carried, Mr. Parrish, Mr. Leonard and Ms. Mandel voting yes, Ms. Migden not participating in accordance with Government Code section 15626, Mr. Chiang not participating, the Board ordered to grant the petition as to Issue 1-A.

Upon motion of Mr. Parrish, seconded by Mr. Leonard and duly carried, Mr. Parrish and Mr. Leonard voting yes, Ms. Mandel voting no, Ms. Migden not participating in accordance with Government Code section 15626, Mr. Chiang not participating, the Board ordered to grant the petition as to Issue 1-B.

Upon motion of Mr. Parrish, seconded by Mr. Leonard and unanimously carried, Mr. Parrish, Mr. Leonard and Ms. Mandel voting yes, Ms. Migden not participating in accordance with Government Code section 15626, Mr. Chiang not participating, the Board ordered to deny the petition as to the Issue 1-C.

Upon motion of Mr. Parrish, seconded by Mr. Leonard and unanimously carried, Mr. Parrish and Mr. Leonard voting yes, Ms. Mandel abstaining, Ms. Migden not participating in accordance with Government Code section 15626, Mr. Chiang not participating, the Board ordered to grant the petition as to Issue 2 with regards to Duarte, Thousand Oaks and the Los Angeles facilities.

Upon motion of Mr. Parrish, seconded by Mr. Leonard and unanimously carried, Mr. Parrish, Mr. Leonard and Ms. Mandel voting yes, Ms. Migden not participating in accordance with Government Code section 15626, Mr. Chiang not participating, the Board ordered to grant the petition as to Issue 2 with regards to the Hayward facility.

Upon motion of Mr. Parrish, seconded by Mr. Leonard and unanimously carried, Mr. Parrish, Mr. Leonard and Ms. Mandel voting yes, Ms. Migden not participating in accordance with Government Code section 15626, Mr. Chiang not participating, the Board ordered that the petition as to Issue 3 be submitted for decision, granting the petitioner 30 days to submit supporting documents, the Franchise Tax Board 30 days to respond and the Appeals Division 30 days thereafter to review the appellant's supporting documents, the Franchise Tax Board's response and provide its recommendation to the Board.

**Wednesday, February 5, 2003**

The Board adjourned at 3:50 p.m.

*The foregoing minutes are adopted by the Board on March 26, 2003.*

Note: The following cases were removed from the calendar prior to the meeting: *AT & T Communications, Inc., 152004; Plastic Pilings, Inc., 104744; Gurmail Athwal, 153923; Nortek, Inc., 149320; and, Robert V. Kuenzel and Anne R. Pollack, 155432.*

**Wednesday, February 5, 2003**